IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 611 of 1992

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PREMJI VIRJI SINCE DECEASED THROUGH HIS HEIRS

Versus

NAGINDAS CHHAGANLAL [SINCE DECD. THRO HIS HEIRS & L.R.]

Appearance:

1. Civil Revision Application No. 611 of 1992

MR SM SHAH with Mr. RC KAKKAD for Petitioners

MR DG CHAUHAN for Respondents No. 1,2

RULE SERVED for Respondent No. 1/1-1/5

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 04/05/2005

ORAL JUDGEMENT

Feeling aggrieved by the judgment and order dated

19th September, 1991 passed by the learned Assistant Judge, Jamnagar in Civil Regular Appeal No. 237 of 1983, the appellant, defendant in Regular Civil Suit No. 744 of 1977 has preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"].

The respondents are the landlords. The suit shop situated at Jamnagar was leased to the petitioner for a monthly rent of Rs.30/=. The rent was agreed to be increased to Rs. 40/= from 1st November, 1974. As the petitioner was in arrears of rent since 1st November, 1974, the suit notice [Exh.51] as envisaged by Section 12 (2) of the Rent Act was given on 5th November, 1977. The suit notice was received by the petitioner on 9th November, 1977. The petitioner did not reply to the suit notice nor did he pay the amount of arrears of rent due until the expiry of one month from the date of the receipt of the suit notice. The respondents, therefore, instituted Regular Civil Suit No. 744 of 1977 in the Court of learned Civil Judge [JD], Jamnagar for recovery of possession of the suit premises on the ground, inter alia, that the petitioner was tenant in default and that he was not ready and willing to pay the rent. Pending the suit, on 30th December, 1977, the petitioner took out Misc. Application No. 151 of 1977 for fixation of standard rent of the suit shop. The suit was contested by the petitioner by filing written statement [Exh.16]. The petitioner denied that he was in arrears of rent for 36 months, as alleged, or that he was not ready and willing to pay the rent. Though he did admit that he was in arrears of rent since 1st November, 1974, according to the petitioner, the plaintiff used to buy grocery from his shop on credit on understanding that the amount of such purchases shall be adjusted against the monthly rent. The petitioner had to recover a sum of Rs. 637/=. The standard rent of the suit shop was Rs.30/= per month. After adjusting the said amount against the rent due, the petitioner was in arrears of rent for fifteen months. The petitioner had offered Rs. 450/= to the advocate of the respondents. But the said lawyer refused to accept the amount offered by the petitioner.

The learned Civil Judge by the judgment and order dated 30th April, 1983 held that the standard rent and permitted increase of the suit shop was Rs.40/= per month; and that the petitioner was in arrears of rent since 1st November, 1974, as alleged. That the petitioner did not raise dispute as to the standard rent or permitted increase within one month from the date of

the receipt of the suit notice as envisaged by Section 12 (3)(a) of the Rent Act. The claim for adjustment made by the petitioner was not believed. The learned Civil Judge, therefore, held that the plaintiffs were entitled to decree for eviction as envisaged by Section 12 (3)(a) of the Rent Act. Accordingly, a decree for possession and for arrears of rent was passed. Feeling aggrieved, the petitioner preferred Civil Reg. Appeal No. 237 of 1983 against the decree for possession passed by the learned Civil Judge and Civil Revision Application No. 15 of 1983 against the standard rent of Rs.40/= fixed by the learned Civil Judge. The lower appellate Court by judgment and order dated 19th September, 1991 confirmed the finding of the learned Civil Judge and dismissed the Appeal as well as Civil Revision Application No.15 of 1983. Therefore, the present Revision Application.

Mr. Shah has submitted that the Courts below have erred in holding that the petitioner had neglected to pay the standard rent and permitted increase and was not willing to pay the rent. He has submitted that in the earlier proceeding, the standard rent was fixed at Rs. 30/= per month. Once the standard rent had been fixed by an order of the competent court, the respondents landlords had no right to claim the rent more than the standard rent fixed by the Court. In the present case, the standard rent that was fixed by the Court was Rs.30/=. Nevertheless, the respondents demanded monthly rent of Rs.40/=. The petitioner, therefore, had legitimate right to refuse to pay such rent. He has submitted that the additional Rs.10/= per month was demanded by the landlords for the alleged repairs made by him in the suit shop. He has submitted that the Rent Act enjoins the landlord to keep the rented premises in good repairs and tenantable condition. Hence, it was the duty of the respondents to make repairs to the suit shop and keep it in a good tenantable condition. If the respondent had made any repairs, as alleged, they had no right to claim increase in the rent. He has further submitted that the petitioner did object to the respondents' demanding additional Rs.10/= per month. Hence, there was a legitimate dispute as to the standard rent and the permitted increase demanded by the respondents. The case, therefore, would not fall within the purview of Section 12 (3)(a) of the Rent Act. The petitioner was protected against eviction by Section 12 (3)(b) of the Rent Act. The petitioner did comply with the conditions mentioned in Section 12 (3)(b) of the Rent Act i.e. the petitioner did deposit the amount of standard rent before the first date of hearing of the suit. The petitioner also continued to deposit monthly

rent in the Court regularly, rather in advance. Pending the appeal also, the petitioner had continued to deposit the standard rent in the Court. The petitioner is, therefore, entitled to protection against the eviction as envisaged by Section 12 (3)(b) of the Rent Act. As to the standard rent of Rs. 40/= fixed by the trial Court and confirmed by the lower appellate court, he has submitted that the lower appellate court has confirmed the finding recorded by the trial court without considering the evidence on record. He has submitted that the respondents had admitted in their evidence that respondents had spent a sum of Rs. 1,200/= for the repairs made to the suit shop. If at all the respondents were entitled to any return on the said expenses incurred by them, considering the provisions contained in Section 34 CPC and the bank rate etc., such permitted increase could not have been more than Rs. 5 or Rs.6 per month. The courts below have erred in awarding Rs. 10/= per moth by way of permitted increase. In support of his argument, Mr. Shah has relied upon the definition of word "permitted increase" in Section 5 (7) of the Rent Act and Sections 7 & 9 and Section 12 (3)(a) and 12 (3)(b) and Section 23 of the Rent Act. He has also relied upon the judgment of the Hon'ble Supreme Court in the matter of Vora Abbasbhai Alimahomed vs. Haji Gulamnabi Haji Safibhai [AIR 1964 SC 1341], and of this Court in the matter of Naranbhai Nathabhai Koli vs. Modhia Panalal Maganlal [1982 (2) GLR 98]; of Rupaben Wd/o. Kaththu Dhanji & Anr. Babubhai Deojibhai [1983 (1) GLR 263] and a Division Bench decision of this Court in the matter of Asandas Nainumal Mithaiwala vs. Haji Gulammohmed Haji Dada [Civil Revision Application No. 122 of 1972 :: Decided on 6-10-1977 :: Coram-A.D Desai & N.H Bhatt, JJ.].

The words "permitted increase" are defined to mean, "an increase in rent permitted under the provisions of this Act." Section 7 of the Rent Act provides, inter alia, that, "..Except where the rent is liable to periodical increment by virtue of an agreement entered into before the specified date [sic. specified date in relation to the suit premises is 1st day of January, 1941], it shall not be lawful to claim or receive on account of rent for any premises any increase above the standard rent.." Section 9 of the Act enables the landlord to make such increase in the rent of the premises, as may be reasonable, for an improvement or structural alteration of the premises which has been made with the consent of the tenant given in writing. Sub-section 1 of Section 23 of the Rent Act enjoins the landlord to keep the premises in good and tenantable

repair.

In the matter of Vora Abbasbhai Alimahomed [Supra], the Hon'ble Supreme Court has discussed the scope and ambit of Section 12 of the Rent Act with regard to tenant's liability to pay or tender in Court, the standard rent and permitted increase. Pending the suit and the implications of the pending dispute as to the standard rent and permitted increase, the same principle is laid down in the matter of Naranbhai Nathabhai Koli [Supra]. The Court has observed that, "..for the purpose of sec.12 (3)(b), the dispute of 'standard rent' very much exists and to debar the tenant of the benefit of sec. 12 (3)(b) there must be a clear 'adjudication' either earlier or in that proceeding itself, about what the 'standard rent' is." In the matter of Rupaben Wd/o. Kaththu Dhanji [Supra], this Court has held that, "..There is no question of regular deposit during the appeal, because during the appeal also the dispute about the standard rent was agitated before the learned Judges but was not pressed at hearing as no specific point for determination has been raised by the learned Judges." In the aforesaid matter of Asandas Nainumal Mithaiwala [Supra], though the tenant had not raised a specific dispute as to the standard rent, the tenant did dispute his liability to pay increased rent unless the landlord provided a separate water connection as agreed. The learned Judges held that for raising dispute as to the standard rent, there was no specific language required and the tenant's demand that landlord shall fulfill his promise amounted to dispute as to the standard rent.

Mr. Chauhan has appeared for the respondents-landlords and has contested the Revision Application. He has submitted that the suit notice Exh.51 was given on 5th November, 1977 which was duly received by the petitioner on 9th November, 1977. Within one month of the receipt of the suit notice, the petitioner did not reply the suit notice nor did he raise dispute as to the standard rent and permitted increase as envisaged by Section 12 (3) of the Rent Act. He has submitted that the petitioner did raise dispute as to the permitted increase but long after the expiry of the statutory period of one month. Such dispute raised after expiry of period of one month would not take the matter out of the purview of Section 12 (3)(a) of the Rent Act. The petitioner was, therefore, liable for eviction as envisaged by Section 12 (3)(a) of the Rent Act. He has also submitted that though the trial Court had determined the standard rent and permitted increase at Rs.40/- per month, pending the appeal, the petitioner neglected to

pay or deposit the standard rent and permitted increase fixed by the trial Court. The petitioner would not, in any view of the matter, be entitled to protection against eviction under Section 12 (3)(b) of the Rent Act. In support of his argument, he has relied upon the decision in the matters of Chunilal Shivlal [by his general power of attorney holder Sumanlal Chunilal vs. Chimanlal Nagindas [1966 GLR 945]; of Harbanslal Jagmohandas & Anr. vs. Prabhudas Shivlal [AIR 1976 SC 2005 :: Para-19]; of Jaywant S. Kulkarni & Ors. vs. Minochar Dosabhai Shroff & Ors. [AIR 1988 SC 1817]; of Pinjara Habib Mohmed v. Pathan Nishar Ahmedkhan [1999 (2) GLR 1385]; and of Shah Ratanlal Motilal v. Uma Transport Company [2003 (2) GLR 989]. Mr. Chauhan has also submitted that in view of the concurrent finding recorded by both the Courts below, this Court shall, in exercise of revisional jurisdiction under Section 29 (2) of the Rent Act, not interfere with the finding recorded by the Courts below.

It has come on record that the petitioner had taken the suit shop on rent of Rs. 30 per month under the Rent Note dated 4th March, 1953 [Exh.49]. Since then, by order dated 4th September, 1967 made by the learned Civil Judge [JD], Jamnagar in Misc. Civil Application No.57 of 1966, the standard rent of the suit shop was fixed at Rs.30/= per month inclusive of all taxes. Thereafter, the respondents had started construction of two additional floors above the suit shop and other shops in the same building. The petitioner and the other tenants lodged objection against such construction. The said dispute was compromised. Under the said compromise [Exh.80], the respondents agreed to make improvements in the shops on the ground floor and to make alternations as may be required by the respective tenant. On the said assurance given by the respondents, the tenants including the petitioner withdrew their objection. It was the case of the respondents that accordingly, the respondents had made repairs and improvements in the rented shops by constructing loft in the shops and had made certain alterations as were required by the respective tenant.

Pending the suit, the petitioner filed Misc. Civil Application NO. 151 of 1977 for determination of standard rent under Section 11 (2) of the Rent Act. Pending the said application, by order dated 30th December, 1977 made below Application Exh.5, the petitioner was directed to pay interim standard rent at Rs.30/= per month and to deposit the arrears of rent due before 20th January, 1978 and to deposit the rent every month regularly. Pursuant to the said direction, the

petitioner deposited the amount of arrears of rent due and also deposited the monthly rent of Rs.30/= regularly pending the suit.

On perusal of the suit notice, it is quite clear that in the suit notice, the respondents specifically demanded monthly rent of Rs.40/= since 1st November, 1974 [Rupees Thirty being the standard rent of the suit shop and rupees ten being permitted increase, as agreed]. Admittedly, the rent was payable by month. The petitioner, within one month from the date of the receipt of the suit notice did not pay the standard rent and permitted increase as demanded nor did he dispute such demand by giving reply to the suit notice or by making application as envisaged by Explanation to Section 12 (3) of the Rent Act. Such application was made on 30th December, 1977 i.e. after expiry of the period of one month. On perusal of the written statement, it is evident that the petitioner did admit that he was in arrears of rent since 1st November, 1974. He, however, came out with a case that he was entitled to recover of Rs. 637/= from the respondents, the amount of grocery sold to the respondents on credit. First, the petitioner failed to prove that he was entitled to recover a sum of Rs.637/= as alleged. Second, even if such recovery were proved, as claimed by the petitioner, he was still in arrears of rent for fifteen months. It is also evident that the petitioner had raised dispute as to the permitted increase i.e. Rs.10/= per month. If there were a genuine dispute, such dispute had to be raised within one month from the date of the receipt of the suit notice. Indisputably, the suit notice was received by the petitioner on 9th November, 1977, he neither paid the amount of rent due nor did he raise dispute within such one month. The dispute raised in the Civil Misc. Application No. 151 of 1977 or in the written statement filed in the suit, after the expiry of the said period of one month would not take the matter out of the purview of Section 12 (3)(a) of the Rent Act. I am of the opinion that both the Courts below have rightly held that the petitioner was liable for eviction as envisaged by Section 12 (3)(a) of the Rent Act.

As to the standard rent and permitted increase, Mr. Shah is right in contending that the landlord has no right to charge rent more than the standard rent and permitted increase. In the present case, there is no dispute that the standard rent was determined in Application No. 57 of 1966. The respondents, therefore, could not have claimed rent of more than Rs. 30/= per month. It is evident from the writing Exh. 80 signed by

the tenants, including the present petitioner that under the said compromise before the Municipality, the respondents had agreed to make improvement and alterations in the shops. It has been proved before the Court that such repairs were indeed made by the respondents. The learned Civil Judge has accepted the permitted increase of Rs.10/= per month, considering the expenses incurred by the respondents. The learned Civil Judge held that the demand of Rs. 10/= per month was reasonable and allowed the permitted increase to that extent. The said finding has been confirmed by the lower appellate court. This Court exercising revisional jurisdiction under Section 29 (2) of the Rent Act would not interfere in the matter of reasonable return decided by the Courts below.

As I have held that the matter falls within the purview of Section 12 (3) (a) of the Rent Act and the eviction is inevitable, I do not examine whether the petitioner is entitled to protection against eviction under Section 12 (3)(b) of the Rent Act; whether pending the appeal and challenge to the standard rent fixed by the Civil Court, the petitioner was liable to pay or deposit the standard rent of Rs. 30/= per month or the standard rent and permitted increase of Rs. 40/= per moth as decided by the Civil Court.

In view of the above discussion, the Revision Application is dismissed with cost. Rule is discharged. Interim relief is vacated.

At the request of the learned advocate Mr. Shah, the interim protection operating pending this Revision Application shall stand extended upto 30th July, 2005 on usual terms and on condition that commencing from 1st May, 2005, the petitioner pays occupancy fee of Rs.500/= per month. Such fee shall be paid on or before 10th day of the next succeeding month.

{Miss R.M Doshit, J.}

Prakash*